IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Bhanwar Singh Vs. State of Rajasthan

S.B.CR.REVISION PETITION NO.548/2006

against the judgment and order dt.1.7.2006 passed by Sessions Judge, Jaisalmer in Cr.Appeal No.2/2006.

DATE OF ORDER :: July 06, 2006

HON'BLE MR.H.R.PANWAR,J.

Mr. L.D.Khatri, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor.

BY THE COURT:

This criminal revision under section 397/401 of the Code of Criminal Procedure, 1973 (for short `the Code' hereinafter) is directed against the judgment and order dt. 1.7.2006 passed by learned Sessions Judge, Jaisalmer (for short `the appellate court' hereinafter) in Cr.Appeal No.02/2006 whereby the appellate court partly allowed the appeal filed by the petitioner against the judgment and order dt. 21.12.2005 passed by Judicial Magistrate, Jaisalmer (for short `the trial court' hereinafter) in criminal original case No.51/2001, whereby the trial court convicted the petitioner for the offences under sections 332 and

353 I.P.C. and sentenced him to undergo one year's simple imprisonment and a fine of Rs.200/-, in default of payment of fine, further to undergo seven days' simple imprisonment for the offence under section 332 I.P.C. and six months' simple imprisonment and a fine of Rs.200/-, in default of payment of fine, further to under seven days' simple imprisonment for the offence under section 353 I.P.C. Both the substantive sentences were directed to run concurrently. The appellate court set aside the conviction and sentence awarded to the petitioner for the offence under section 353 I.P.C. and while maintaining the conviction and sentence of fine for the offence under section 332 I.P.C., reduced the substantive sentence to one month's simple imprisonment. Aggrieved by the judgment and order impugned, the petitioner has filed the instant revision petition.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the judgments and orders of the trial court as well as the appellate court. Learned counsel for the petitioner has also shown me the statements of witnesses and the evidence produced by the prosecution before the trial court.

At the very outset, counsel for the petitioner submits that the petitioner does not want to challenge his conviction for the

offence under section 332 I.P.C. and, therefore, the learned counsel has confined his arguments on the point of sentence and submits that the petitioner has already undergone the imprisonment during the trial and from the date of judgment of appellate court for about seven days out of the sentence of one month. He further submits that it was the first offence of the petitioner and there is nothing adverse antecedent to his credit and, therefore, the sentence of imprisonment may be reduced to the period already undergone by the petitioner.

Learned Public Prosecutor submits that the sentence awarded cannot be said to be excessive warranting any further reduction.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

From the statements of the prosecution witnesses, the prosecution has proved the case beyond reasonable doubt against the petitioner for the offence under section 332 I.P.C. and, therefore, in my view the counsel for the petitioner rightly did not challenge the conviction. It appears that occurrence took place on the spur of the moment with regard to distribution of water irrigating the filed. The petitioner has faced the protracted

trial, appeal and the revision. He has already undergone the imprisonment for about seven days out of one month's imprisonment. There is nothing adverse antecedent to his credit and this being the first offence. Therefore, ends of justice would be met if the sentence of imprisonment is reduced to the period of imprisonment already undergone by the petitioner.

In the result, the revision petition is partly allowed. While maintaining the conviction of the petitioner under section 332 I.P.C. and the sentence of fine, the substantive sentence of imprisonment is reduced to the period of imprisonment already undergone by the petitioner. The petitioner is in jail. He be set at liberty forthwith on deposit of fine amount.

S.B.Criminal Misc. Bail Application No.163/2006 seeking suspension of sentence stands disposed of.

[H.R.PANWAR],J.

m.asif/-